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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,051	12/29/2004	Joachim Berg	Ruff 53	5080
23474 7590 02/09/2007 FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631			EXAMINER SPAHN, GAY	
			ART UNIT	PAPER NUMBER
			3635	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/520,051

Applicant(s)

BERG, JOACHIM

Examiner

Gay Ann Spahn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/29/04, 9/29/06, and 1/22/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,7,9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 29 December 2004.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of GROUP I (i.e., claims 1-9), SPECIES I of the first group of species, SPECIES I of the second group of species, and SUBSPECIES I with respect to SPECIES I of the second group of species in the replies filed on 29 September 2006 and 22 January 2007 is acknowledged.

Applicant has listed claims 1, 3, and 5 as being readable upon all of the elected species because those claims are generic. However, the examiner believes that claim 8 also reads on the elected species and therefore, claims 1, 3, 5, and 8 will be examined. Claims 2, 4, 6, 7, and 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the replies filed on 29 September 2006 and 22 January 2007.

The examiner notes that Applicants telephoned the examiner to point out that she mistakenly withdrew claim 9 from further consideration in the Notice of Non-Responsive Amendment mailed on 20 December 2006. The examiner acknowledges that on page 2, line 1, of the third full paragraph, it should have said that only claim 10 was withdrawn from further consideration as being drawn to a non-elected invention.

Therefore, for clarity, the examiner is restating that claim 10 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected

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invention, there being no allowable generic or linking claim. Election was made **without** traverse in the replies filed on 29 September 2006 and 22 January 2007.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 29 December 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

The drawings are objected to because:

(1) the examiner has noted the use of arrow at the end of lead lines which does not appear to comply with 37 CFR § 1.84(r)(1-3) and therefore, Applicant must delete any of the arrows at the end of lead lines that does not comply with 37 CFR § 1.84(r)(1-3);

(2) the examiner notes that there are many instances of the use of direction arrows which has not been properly described in the specification (for instance in Fig. 22, the up-and-down direction double arrow has been labeled with the letter "S" and

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discussed in the specification, but Figs. 6, 10-20, 24, and 26 have directional arrows which have not been labeled and discussed in the specification);

(3) Fig. 7, the dashed lines around the outside edge of the support unit are not understood and should be labeled and explained in the specification;

(4) Fig. 8, if the bottom of the figure around reference numeral 15 is showing a cutaway view, then this should be explained in the specification and if the support unit (1g) is not made of metal, the metal cross-hatching symbol around the plug connection element (15) should be deleted;

(5) Figs. 12-14, 18, 19, and 23 appear to be exploded views and thus should have the separated parts embraced by a bracket pursuant to 37 CFR 1.84(h)(1);

(6) Fig. 15 should either be divided into two separate figures or else, the right-most support unit (1) located between the table top and legs should be removed and a bracket should be inserted to embrace the separated parts as is required of exploded views pursuant to 37 CFR 1.84(h)(1);

(7) Fig. 17, it is believed that reference numeral "25" should be changed to --26-- since the table embodiment shown in Fig. 17 is the same table embodiment shown in Fig. 16, not Fig. 15;

(8) Fig. 17, it is believed that both occurrences of reference character "31" should be changed to --3i-- for compliance with the specification;

(9) Fig. 20, the solid and dashed line above the double-headed curved arrow is not understood and should be removed; and

(10) Fig. 26, it is not understood where the support element (39) shown in Fig. 27 is in Fig. 26.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- (1) reference characters "1a", "2a", "3a", "4a", and "5a" in Fig. 2;
- (2) reference characters "1b" and "3b" in Fig. 3a;

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- (3) reference characters "1c" and "3c" in Fig. 3b;
- (4) reference characters "1d" and "3d" in Fig. 3c;
- (5) reference characters "1e" and "3e" in Fig. 3d;
- (6) reference characters "1f" and "3f" in Fig. 3e;
- (7) reference numeral "7" in Fig. 5 (the examiner suggests that this could be remedied by amending the specification on page 11, line 32, to insert reference numeral --7-- after the word "legs");
- (8) reference character "5i" in Fig. 13;
- (9) reference character "3k" and reference numeral "24" in Fig. 14;
- (10) reference characters "4m" and "5m" in Fig. 22;
- (11) reference character "3n" in Fig. 23; and
- (12) reference numerals "33" and "35" in Figs. 24 and 25.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- (1) page 7, lines 25-26, each of Figures 3a, 3b, 3c, 3d, and 3e should be discussed separately as to particularly what is shown in each figure.
- (2) page 13, line 27, change "5a" to --5h--;
- (2) page 13, line 28, change "4a" to --4h--; and
- (3) page 15, lines 24 and 35, reference character "29a" has been called "a cover element" and "a plug element" and consistent terminology should be used throughout the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by SEWELL (U.S. Patent No. 5,946,749).

As to claim 1, SEWELL discloses a supporting device (2) for a person's back and head area, with a back support section (12) and with a head support section (16), characterized in that, in a supporting position, a partial area of the back support section (12) has, at the level of shoulder blade areas of the back area, a support surface in a

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spinal column area and, on both sides of the support surface, open areas (32, 32) which are configured in such a way that the shoulder blade areas can move downward past the support surface.

As to claim 3, SEWELL discloses the supporting device of claim 1, and SEWELL also discloses that the open areas (32, 32) are formed by laterally open recesses (32, 32) of the back support section (12).

As to claim 5, SEWELL discloses the supporting device of claim 1, and SEWELL also discloses that the back support section (12) and the head support section (16) are integrated in a rigid support unit.

As to claim 8, SEWELL discloses a home or workplace furniture item or leisure item, characterized in that a supporting device (2) of claim 1 is provided.

Claims 1, 3, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by PEPIN (U.S. Patent No. 4,913,424).

As to claim 1, PEPIN discloses a supporting device (Figs. 1 and 2) for a person's back and head area, with a back support section (5) and with a head support section (8), characterized in that, in a supporting position, a partial area of the back support section (5) has, at the level of shoulder blade areas of the back area, a support surface in a spinal column area and, on both sides of the support surface, open areas (7, 7) which are configured in such a way that the shoulder blade areas can move downward past the support surface.

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As to claim 3, SEWELL discloses the supporting device of claim 1, and SEWELL also discloses that the open areas (7, 7) are formed by laterally open recesses (7, 7) of the back support section (5).

As to claim 5, SEWELL discloses the supporting device of claim 1, and SEWELL also discloses that the back support section (5) and the head support section (8) are integrated in a rigid support unit.

As to claim 8, SEWELL discloses a home or workplace furniture item or leisure item, characterized in that a supporting device (Figs. 1 and 2) of claim 1 is provided.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various patents cited of interest include: U.S. Patent No. 5,222,779 to Johnson; U.S. Design Patent No. Des. 423,240 to White; U.S. Patent No. 5,649,886 to Danylieko; U.S. Patent No. 5,184,363 to Falbo, Sr.; U.S. Patent No. 5,919,131 to Smoler et al.; U.S. Patent No. 7,037,247 to Bergeron; U.S. Patent No. 5,479,667 to Nelson et al.; and U.S. Patent No. 3,660,461 to Moriyama.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:00 am to 7:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571)-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

^{GAS}
Gay Ann Spahn, Patent Examiner
February 1, 2007


Carl D. Friedman
Supervisory Patent Examiner
Group 3600